

to the matter but I do not think they accepted the gratifications as a motive or reward for not doing so. I feel sure the Siamese who paid the \$15 were not in the least interested in dissuading the respondents by reward or otherwise from performing their official duties as such in respect of the calf, and that the money was accepted simply as a commercial consideration for allowing the Siamese to have the meat. This ground of appeal must also in my view fail.

The appeal is dismissed.

Appeal dismissed.

P. V. RAMAN CHETTIAR v. TAN CHOO WOO & ANOR.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore), and Wilson, J.)
July 24, 1952]

[K.L. — Civil Appeal No. 39 of 1952]

Debtor and Creditor (Occupation Period) Ordinance, 1948, s. 4(2)(ii) — Revaluation of a debt contracted prior to Japanese Occupation of Malaya and repaid during the Occupation — Hindu joint-family — Demand — A request and a demand — Whether any difference.

In 1940 one Lee Yuan Neo charged certain land in favour of the appellant. On January 20, 1941 the appellant made a Declaration of Trust in which he declared that the Charge was held by him in trust for a Hindu Family. The Charge was then transferred to him "as Trustee". Just prior to the Occupation he left Malaya and appointed P. L. T. Vairavan Chettiar as his Attorney. The chargor died during the Occupation and eventually the Official Administrator was appointed Administrator, the defendants in the Summons being then minors (subsequently the defendants became the Administrators). There was correspondence which showed that the beneficiaries were anxious to pay off the Charge.

It would appear that because the Official Administrator was prepared to pay off the Charge the Attorney applied to the Japanese Court for the Charge to be transferred into his name "as Trustee". Vairavan Chettiar was duly registered "as Trustee" on August 21st, 1944 and on August 23rd, 1944 he wrote to the Official Administrator, Seremban and the Public Trustee, Selangor stating that he had been registered "as Trustee" and he requested the amount due on the Charge to be paid to him. The money was duly paid and a Discharge was registered on September 25th, 1944. Vairavan Chettiar died on September 25th, 1950.

By Originating Summons No. 4 of 1951 the appellant applied to the Court and was re-appointed Trustee and the Order appointed him Trustee in respect of the Charge Presentation No. 76151; it was further ordered that the Charge be vested in him "as Trustee". The appellant then sent a notice pursuant to the provisions of section 11(3) of the Debtor and Creditor (Occupation Period) Ordinance, 1948.

It was submitted by the learned counsel for the respondents that the Order re-appointing the appellant Trustee had no effect. The Charge had been discharged on September 25th, 1944 and there was nothing which

could be vested in him. If according to the provisions of the Debtor and Creditor (Occupation Period) Ordinance there could be a revaluation of the payment the land was subject to a statutory Charge created by the Ordinance but the old Charge was not revived. In consequence, when Vairavan Chettiar died, the statutory Charge formed part of his Estate and the appellant should have asked for the benefit of the statutory Charge to be transferred to him "as Trustee". This not having been done the statutory Charge if any was still in the Estate of Vairavan Chettiar.

The learned counsel further submitted that the letters written to Vairavan Chettiar which indicate that the Administrator of the Chargor was prepared to pay off the debt must be ignored because by applying to the Court and by obtaining the registration of the Charge in his name "as Trustee" he immediately became a new Creditor. As he became a Creditor on August 21st, and as he wrote the letters of demand on August 23rd, that quite clearly was a demand and the amount was paid within 3 months.

The learned trial judge held that (1) the Order of this Court bringing back the appellant into the trust deed was nugatory in that the deed had lapsed and had not been revived and therefore the appellant must be non-suited; and (2) the letter of request in this case amounted to a demand within the meaning of section 4(2)(ii) of the Ordinance.

The plaintiff-appellant appealed, and the Court of Appeal, in allowing the appeal:—

Held, per curiam that (1) the Order was beyond doubt to put the plaintiff-appellant in the same position and with the same rights as the deceased trustee; (2) the letters relied on by the defendants-respondents must be considered in the light of circumstances and the rest of the correspondence, and in view of the circumstances these letters cannot be considered a demand within the meaning of the Ordinance. Per Sir Charles Murray-Aynsley, C.J. (Singapore): The Words of the Ordinance are not technical, but their purpose is clearly to distinguish between cases where a debt is repaid at the instance of the creditor and where it is repaid at the instance of the debtor.

COURT OF APPEAL, appeal against the decision of Abbot, J.

Dr. C. H. Withers-Payne for the plaintiff-appellant.

Peter Hill for the defendants-respondents.

Cur. Adv. Vult.

Mathew, C.J., (F.M.) : — This is a claim by a trustee for the re-instatement of a security under section 11(5) of the Debtor and Creditor (Occupation Period) Ordinance, 1948. The learned trial judge dismissed the claim on the ground that the plaintiff was not vested under the order of the High Court at Seremban dated the 31st January, 1951, with the right to prosecute this claim and that such right was vested in the administrator of the estate of one Vairavan Chettiar the former trustee who had died. I am not in agreement with this proposition. It is true that the terms of the order are not as clear as they might be, but the intention of the order was beyond doubt to put the plaintiff in the same position and with the same rights as the deceased trustee. The learned trial

judge having non-suited the plaintiff-appellant found as a fact that a demand had been made by the deceased trustee in a letter addressed to the Public Trustee on the 23rd August, 1944, which reads :—

"I have the honour to inform you that I am appointed as trustee by the order of the Supreme Court of Seremban on the 19th day of August 2604 in place of P. V. Raman Chettiar son of Palaniappa Chettiar in respect of Presentation No. 76151, Fol. 18 Volume LXXIX registered in the Registry of Titles, N.S. Seremban. Therefore I hereby request you to be good enough to send the amount due to me in the above estate direct to the above address. I am prepared to discharge the charge."

Having regard to the correspondence prior to this letter, it appears to me that this letter was nothing more than a letter informing the Public Trustee that he was the new trustee and that payments were to be made to him. In my judgment no demand was made.

I would allow the appeal with costs, and order that the deposit in Court be paid to the appellant. There will be judgment for the plaintiff-appellant as prayed with costs.

Sir Charles Murray-Aynsley, C.J., (Singapore) :

— This was a reinstatement claim by a trustee. The trial judge dismissed the claim on the grounds: (a) that the rights claimed were not vested in the plaintiff, and (b) that there had been a demand.

On the first point the question turns on consideration of whether a vesting order made by the Court in Seremban was apt to confer the rights arising out of the Debtor and Creditor (Occupation Period) Ordinance, 1948 on the plaintiff. That order was obtained in consequence of the death of a previous trustee and in view of instituting these proceedings. I think that in the case of an order of a Court the principle of

magis valeat quam pereat should be applied. According to the arguments of the respondents that order had no effect at all. I do not agree with this proposition. The order is not perhaps entirely happily worded, but it leaves no doubt as to what the Court intended should be vested in the plaintiff, namely the rights arising from the Ordinance in respect of the charges which had been discharged but which for purposes of the Ordinance have revived.

On the second point, I think that the effect of the letters relied on by the respondents must be considered in the light of circumstances and the rest of the correspondence. The words of the Ordinance are not technical, but their purpose is clearly to distinguish between cases where a debt is repaid at the instance of the creditor and where it is repaid at the instance of the debtor. It is clear that the initiative in the matter in question was taken by the debtors. The creditor's attorney was clearly unwilling but, of course, could not resist, and took the proper step of being himself appointed trustee in place of the previous trustee who had been absent for some years from this country. Having taken this step he informed the Public Trustee and the Official Assignee and asked that the money should be paid to him. In view of the circumstances I do not consider that these letters can be considered a demand within the meaning of the Ordinance.

I agree with the proposed order.

Wilson, J. : — I agree with the judgment of the learned President, and I have nothing to add.

Appeal allowed.

SOO BEE & CO., LTD. v. REX.

[App. Civ. Juris. (Sir Charles Murray-Aynsley, C.J.)
May 28, 1952]

[Singapore — Magistrate's Appeal No. 134 of 1951]

Municipal Ordinance (Cap. 133), ss. 12(3) and (4), 144, 388 and 399—Erecting in rural area a building the plans of which had not been approved by the Rural Board—Constitution of the Rural Board.

The appellant Company was convicted under section 144 of the Municipal Ordinance for erecting a building in the rural area the plans of which had not been approved by the Rural Board. It was contended that the plans were rejected because they did not conform to certain by-laws and as these by-laws were invalid no offence had been committed. It was also contended that the prosecution was not properly instituted, in that it was not authorised in the manner prescribed by section 388 of the Municipal Ordinance.

Held, that (1) if the Rural Board had refused to approve plans for some reason which is bad in law, the person aggrieved has a remedy by way of mandamus or otherwise. If he proceeded to build without approval he had committed an offence; (2) sub-sections (3) and (4) of section 12 of the Municipal Ordinance are applicable to the Rural Board and although there was no legislation which created the office of Deputy Chairman of the Rural Board, it was clearly the intention to invest the Deputy Chairman with powers described in section 12(4).

MAGISTRATE'S APPEAL.

T. W. Ong for the appellant.

L. Rayner for the Crown.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J.:—In this case the appellant Company was convicted under section 144 of the Municipal Ordinance (Cap. 133) for erecting in the rural area a building the plans of which had not been approved by the Rural Board. It was admitted that the Company had proceeded to erect a smoke house the plans of which had previously been submitted to, and rejected by the Board. In the Court below and in grounds of appeal it was contended that the plans were rejected because they did not conform to certain by-laws and as these by-laws were invalid no offence had been committed. This was clearly not the law. It may be that, if the Board refuses to approve plans for some reason which is bad in law, the person aggrieved has a remedy by way of mandamus or otherwise. If he proceeds to build without approval he commits an offence.

There were, however, two subsidiary points. First it was contended that there was no evidence that the building was in the rural area. As the manager of the appellant Company gave evidence to the effect that he had submitted plans to the Board there cannot be anything in this contention.

There was a further point that the prosecution was not properly instituted, in that it was not authorized

in the manner prescribed by section 388. Here the prosecution was launched by a complaint made by a gentleman described as a Building Surveyor, an officer of the Board. It was signed by this gentleman and also by a gentleman who has been appointed Deputy Chairman of the Board and recited the fact that the prosecution had been directed by the Chairman. The direction of the Chairman was not produced at the hearing.

I am not at all satisfied that any sanction is required in these cases. The general rule is that any person can prosecute in non-seizable cases. I shall assume, for purposes of argument, that authority under section 388 is necessary.

If that is the case, a difficulty arises in this way. The Board is constituted under section 399 of the Municipal Ordinance which gives the Governor power to constitute a Rural Board and to apply and adapt the provisions of the Ordinance for the purpose. This was done and various offices were created but not, apparently, an office of Deputy Chairman. Sub-sections (3) and (4) of section 12 of the Municipal Ordinance were, however, applied to the Board. This empowers the Governor in Council to appoint a Deputy President and defines his powers: "(4) The Deputy President shall, subject to the directions of the President, have all the powers of the President....."

On September 8, 1950, (Gazette Notification No. 2023) acting under powers conferred by section 12 of the Ordinance, the Governor appointed Mr. Burlock by name to be Deputy Chairman of the Rural Board. Although there was no legislation which created the office of Deputy Chairman, it was clearly the intention to invest Mr. Burlock with the powers described in section 12(4). I think, therefore, that Mr. Burlock, whose signature appears on the complaint, had authority to direct the prosecution under section 388.

The appeal is, therefore, dismissed.

Appeal dismissed.

NG ENG KANG v. R. SITHARAM & ANOR.

[Court of Appeal (Sir Charles Murray-Aynsley, C.J.
(Singapore), Mathew, C.J. (F.M.) and Storr, J.)
May 25, 1952]

[Singapore — Civil Appeal No. 4 of 1952]

Landlord and tenant—Protection of sub-tenant—Control of Rent Ordinance, 1947—Inferior Court exceeding its jurisdiction—Writ of Prerogative.

If there is no prohibition at the time of sub-letting the sub-tenant is entitled to protection by section 15 of the Control of Rent Ordinance, 1947. The trial Court